

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 810\*  
Commerce Committee Substitute Adopted 5/24/12  
Third Edition Engrossed 6/4/12  
House Committee Substitute Favorable 6/14/12  
Fifth Edition Engrossed 6/21/12

Short Title: Regulatory Reform Act of 2012.

(Public)

Sponsors:

Referred to:

May 21, 2012

A BILL TO BE ENTITLED

1 AN ACT TO (1) REESTABLISH THE JOINT LEGISLATIVE ADMINISTRATIVE  
2 PROCEDURE OVERSIGHT COMMITTEE; (1A) MODIFY APPOINTMENTS TO THE  
3 MINING AND ENERGY COMMISSION; (2A) MAKE VARIOUS TECHNICAL AND  
4 CLARIFYING CHANGES TO THE ADMINISTRATIVE PROCEDURES ACT; (2B)  
5 MAKE CONFORMING CHANGES TO THE STATE PERSONNEL ACT; (3) EXTEND  
6 THE EFFECTIVE DATE FOR CHANGES TO FINAL DECISION-MAKING  
7 AUTHORITY IN CERTAIN CONTESTED CASES; (4) LIMIT THE PERIOD DURING  
8 WHICH RECORDS OF UNCLAIMED PROPERTY MUST BE MAINTAINED; (5A)  
9 DIRECT AGENCIES TO SUBMIT A REPORT ON NOTICE GIVEN BEFORE  
10 AUDITING OR EXAMINING A BUSINESS TO THE JOINT LEGISLATIVE  
11 ADMINISTRATIVE PROCEDURE OVERSIGHT COMMITTEE; (5B) LIMIT STATE  
12 AGENCY IDENTITY THEFT REPORTING REQUIREMENTS; (5C) REQUIRE THE  
13 DEPARTMENT OF LABOR TO PROVIDE NOTICE PRIOR TO INSPECTIONS; (6)  
14 CLARIFY THAT THE DISCHARGE OF WASTE INTO WATERS OF THE STATE  
15 DOES NOT INCLUDE THE RELEASE OF AIR CONTAMINANTS INTO THE  
16 OUTDOOR ATMOSPHERE; (7) AUTHORIZE RATHER THAN REQUIRE THE  
17 COMMISSION FOR PUBLIC HEALTH TO ADOPT RULES FOR THE TESTING OF  
18 WATER FROM NEW DRINKING WATER WELLS FOR CERTAIN VOLATILE  
19 ORGANIC COMPOUNDS; (7A) CLARIFY APPLICATION OF CERTAIN NUTRIENT  
20 RULES TO SMALL WASTEWATER DISCHARGES; (8) DIRECT THE DEPARTMENT  
21 OF ENVIRONMENT AND NATURAL RESOURCES TO TRACK AND REPORT ON  
22 PERMIT PROCESSING TIMES; (9) DELAY THE EFFECTIVE DATE FOR  
23 COMPLIANCE WITH WADING POOL FENCING REQUIREMENTS FROM JULY 1,  
24 2012, TO JANUARY 1, 2013; (10) DIRECT THE COMMISSION FOR PUBLIC  
25 HEALTH TO AMEND THE RULES GOVERNING THE DURATION OF PERMITS  
26 FOR SANITARY LANDFILLS AND THE PERIOD IN WHICH THOSE PERMITS ARE  
27 REVIEWED; (11) AMEND THE CRITERIA FOR DESIGNATION AS A PORT  
28 ENHANCEMENT ZONE; (12) EXEMPT CERTIFIED ROADSIDE FARM MARKETS  
29 FROM CERTAIN BUILDING CODE REQUIREMENTS; AND (13) ALLOW THE  
30 PERMITTING OF MOBILE FOOD UNITS THAT MEET THE SANITATION  
31 REQUIREMENTS OF A COMMISSARY.  
32

33 The General Assembly of North Carolina enacts:



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1           **SECTION 1.** Section 1.3 of S.L. 2011-291 is repealed.

2           **SECTION 1.1.** If Senate Bill 820 becomes law, then, effective August 1, 2012,  
3 G.S. 143B-293.2(a), as enacted by Section 1(b) of Senate Bill 820, reads as rewritten:

4           "(a)   Members Selection. – The North Carolina Mining and Energy Commission shall  
5 consist of 15 members appointed as follows:

- 6           (1)   The Chair of the North Carolina State University Minerals Research  
7           Laboratory Advisory Committee, or the Chair's designee, ex officio.
- 8           (2)   The State Geologist, or the State Geologist's designee, ex officio.
- 9           (3)   The Assistant Secretary of Energy for the Department of Commerce, ex  
10           officio.
- 11           (4)   One appointed by the General Assembly upon recommendation of the  
12           Speaker of the House of Representatives who is a member of a  
13           nongovernmental conservation interest.
- 14           (5)   One appointed by the General Assembly upon recommendation of the  
15           Speaker of the House of Representatives who is an elected official of a  
16           municipal government located in the Triassic Basin of North Carolina.
- 17           (6)   ~~One appointed by the General Assembly upon recommendation of the~~  
18           ~~Speaker of the House of Representatives who is a member of the~~  
19           ~~Environmental Management Commission and knowledgeable in the~~  
20           ~~principles of water and air resources management.~~One appointed by the  
21           General Assembly upon recommendation of the Speaker of the House of  
22           Representatives who is a representative of the mining industry.
- 23           (7)   One appointed by the General Assembly upon recommendation of the  
24           Speaker of the House of Representatives who shall be a geologist with  
25           experience in oil and gas exploration and development.
- 26           (8)   One appointed by the General Assembly upon recommendation of the  
27           President Pro Tempore of the Senate who is a member of a nongovernmental  
28           conservation interest.
- 29           (9)   One appointed by the General Assembly upon recommendation of the  
30           President Pro Tempore of the Senate who is a member of a county board of  
31           commissioners of a county located in the Triassic Basin of North Carolina.
- 32           (10)   ~~One appointed by the General Assembly upon recommendation of the~~  
33           ~~President Pro Tempore of the Senate who is a member of the Commission~~  
34           ~~for Public Health and knowledgeable in the principles of waste~~  
35           ~~management.~~One appointed by the General Assembly upon recommendation  
36           of the President Pro Tempore of the Senate who is a representative of the  
37           mining industry.
- 38           (11)   One appointed by the General Assembly upon recommendation of the  
39           President Pro Tempore of the Senate who shall be an engineer with  
40           experience in oil and gas exploration and development.
- 41           (12)   One appointed by the Governor who shall be a representative of a publicly  
42           traded natural gas company.
- 43           (13)   One appointed by the Governor who shall be a licensed attorney with  
44           experience in legal matters associated with oil and gas exploration and  
45           development.
- 46           (14)   ~~One appointed by the Governor who is a representative of the mining~~  
47           ~~industry.~~One appointed by the Governor who is a member of the  
48           Environmental Management Commission and knowledgeable in the  
49           principles of water and air resources management.
- 50           (15)   ~~One appointed by the Governor who is a representative of the mining~~  
51           ~~industry.~~One appointed by the Governor who is a member of the

1 Commission for Public Health and knowledgeable in the principles of waste  
2 management."

3 **SECTION 2.** G.S. 150B-18 reads as rewritten:

4 **"§ 150B-18. Scope and effect.**

5 This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not  
6 valid unless it is adopted in substantial compliance with this Article. An agency shall not seek  
7 to implement or enforce against any person a policy, guideline, or other ~~nonbinding~~ interpretive  
8 statement that meets the definition of a rule contained in G.S. 150B-2(8a) if the policy,  
9 guideline, or other ~~nonbinding~~ interpretive statement has not been adopted as a rule in  
10 accordance with this Article."

11 **SECTION 3.** G.S. 150B-19.1 reads as rewritten:

12 **"§ 150B-19.1. Requirements for agencies in the rule-making process.**

13 (a) In developing and drafting rules for adoption in accordance with this Article,  
14 agencies shall adhere to the following principles:

- 15 (1) An agency may adopt only rules that are expressly authorized by federal or  
16 State law and that are necessary to serve the public interest.
- 17 (2) An agency shall seek to reduce the burden upon those persons or entities  
18 who must comply with the rule.
- 19 (3) Rules shall be written in a clear and unambiguous manner and must be  
20 reasonably necessary to implement or interpret federal or State law.
- 21 (4) An agency shall consider the cumulative effect of all rules adopted by the  
22 agency related to the specific purpose for which the rule is proposed. The  
23 agency shall not adopt a rule that is unnecessary or redundant.
- 24 (5) When appropriate, rules shall be based on sound, reasonably available  
25 scientific, technical, economic, and other relevant information. Agencies  
26 shall include a reference to this information in the notice of text required by  
27 G.S. 150B-21.2(c).
- 28 (6) Rules shall be designed to achieve the regulatory objective in a  
29 cost-effective and timely manner.

30 (b) Each agency subject to this Article shall conduct an annual review of its rules to  
31 identify existing rules that are unnecessary, unduly burdensome, or inconsistent with the  
32 principles set forth in subsection (a) of this section. The agency shall repeal any rule identified  
33 by this review.

34 (c) Each agency subject to this Article shall post on its ~~Web site when the agency~~  
35 ~~submits the notice of text for publication in accordance with G.S. 150B-21.2~~ Web site, no later  
36 than the publication date of the notice of text in the North Carolina Register, all of the  
37 following:

- 38 (1) The text of a proposed rule.
- 39 (2) An explanation of the proposed rule and the reason for the proposed rule.
- 40 (3) The federal certification required by subsection (g) of this section.
- 41 (4) Instructions on how and where to submit oral or written comments on the  
42 proposed rule.
- 43 (5) Any fiscal note that has been prepared for the proposed rule.

44 ~~The agency shall maintain the information in a searchable database and shall periodically~~  
45 ~~update this online information to reflect changes in the proposed rule or the fiscal note prior to~~  
46 ~~adoption.~~ If an agency proposes any change to a rule or fiscal note prior to the date it proposes  
47 to adopt a rule, the agency shall publish the proposed change on its Web site as soon as  
48 practicable after the change is drafted. If an agency's staff proposes any such change to be  
49 presented to the rule-making agency, the staff shall publish the proposed change on the  
50 agency's Web site as soon as practicable after the change is drafted.

1 (d) Each agency shall determine whether its policies and programs overlap with the  
2 policies and programs of another agency. In the event two or more agencies' policies and  
3 programs overlap, the agencies shall coordinate the rules adopted by each agency to avoid  
4 unnecessary, unduly burdensome, or inconsistent rules.

5 (e) Each agency shall quantify the costs and benefits to all parties of a proposed rule to  
6 the greatest extent possible. Prior to submission of a proposed rule for publication in  
7 accordance with G.S. 150B-21.2, the agency shall review the details of any fiscal note prepared  
8 in connection with the proposed rule ~~with the rule-making body, and the rule-making body~~  
9 ~~must~~ and approve the fiscal note before submission.

10 (f) If the agency determines that a proposed rule will have a substantial economic  
11 impact as defined in G.S. 150B-21.4(b1), the agency shall consider at least two alternatives to  
12 the proposed rule. The alternatives may have been identified by the agency or by members of  
13 the public.

14 (g) Whenever an agency proposes a rule that is purported to implement a federal law, or  
15 required by or necessary for compliance with federal law, or on which the receipt of federal  
16 funds is conditioned, the agency shall:

- 17 (1) Prepare a certification identifying the federal law requiring adoption of the  
18 proposed rule. The certification shall contain a statement setting forth the  
19 reasons why the proposed rule is required by federal law. If all or part of the  
20 proposed rule is not required by federal law or exceeds the requirements of  
21 federal law, then the certification shall state the reasons for that opinion.
- 22 (2) Post the certification on the agency Web site in accordance with subsection  
23 (c) of this section.
- 24 (3) Maintain a copy of the federal law and provide to the Office of State Budget  
25 and Management the citation to the federal law requiring or pertaining to the  
26 proposed rule.

27 (h) Before an agency that is within the Governor's cabinet submits the proposed text of  
28 a permanent rule change for publication in the North Carolina Register, the agency must submit  
29 the text of the proposed rule change and an analysis of the proposed rule change to the Office  
30 of State Budget and Management and obtain a certification from the Office that the agency  
31 adhered to the principles set forth in this section. Before an agency that is within the  
32 departments of the Council of State, other than the Governor, submits the proposed text of a  
33 permanent rule change for publication in the North Carolina Register, the agency must submit  
34 the text of the proposed rule change and an analysis of the proposed rule change to the  
35 Commission and obtain a certification from the Commission, or the Commission's designee, as  
36 described in G.S. 150B-21.1(b), that the agency adhered to the principles set forth in this  
37 section. The Office of State Budget and Management or the Commission, respectively, must  
38 respond to an agency's request for certification within 20 business days of receipt of the  
39 request."

40 **SECTION 4.** G.S. 150B-21.4(a) reads as rewritten:

41 "(a) State Funds. – Before an agency publishes in the North Carolina Register the  
42 proposed text of a permanent rule change that would require the expenditure or distribution of  
43 funds subject to the State Budget Act, Chapter 143C of the General Statutes it must submit the  
44 text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on  
45 the proposed rule change to the Office of State Budget and Management and obtain  
46 certification from the Office that the funds that would be required by the proposed rule change  
47 are available. ~~The Office must also determine and certify that the agency adhered to the~~  
48 ~~principles set forth in G.S. 150B-19.1.~~ The fiscal note must state the amount of funds that  
49 would be expended or distributed as a result of the proposed rule change and explain how the  
50 amount was computed. The Office of State Budget and Management must certify a proposed

1 rule change if funds are available to cover the expenditure or distribution required by the  
2 proposed rule change."

3 **SECTION 5.** G.S. 150B-23.2(b) reads as rewritten:

4 "(b) Time of Collection. – All fees that are required to be assessed, collected, and  
5 remitted under subsection (a) of this section shall be collected by the Office of Administrative  
6 Hearings at the time of commencement of the contested case (~~except in suits in forma~~  
7 ~~pauperis)~~except as may be allowed by rule to permit or complete late payment or in suits in  
8 forma pauperis."

9 **SECTION 6.** G.S. 150B-23(a) reads as rewritten:

10 "(a) A contested case shall be commenced by paying a fee in an amount established in  
11 G.S. 150B-23.2 and by filing a petition with the Office of Administrative Hearings and, except  
12 as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who  
13 files the petition shall serve a copy of the petition on all other parties and, if the dispute  
14 concerns a license, the person who holds the license. A party who files a petition shall file a  
15 certificate of service together with the petition. A petition shall be signed by a ~~party or a~~  
16 ~~representative of the party~~ party, an attorney representing a party, or other representative of the  
17 party as may specifically be authorized by law, and, if filed by a party other than an agency,  
18 shall state facts tending to establish that the agency named as the respondent has deprived the  
19 petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise  
20 substantially prejudiced the petitioner's rights and that the agency:

21 (1) Exceeded its authority or jurisdiction;

22 (2) Acted erroneously;

23 (3) Failed to use proper procedure;

24 (4) Acted arbitrarily or capriciously; or

25 (5) Failed to act as required by law or rule.

26 The parties in a contested case shall be given an opportunity for a hearing without undue delay.  
27 Any person aggrieved may commence a contested case hereunder.

28 A local government employee, applicant for employment, or former employee to whom  
29 Chapter 126 of the General Statutes applies may commence a contested case under this Article  
30 in the same manner as any other petitioner. The case shall be conducted in the same manner as  
31 other contested cases under this Article."

32 **SECTION 7.1.** G.S. 150B-29(a) reads as rewritten:

33 "(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall  
34 be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division  
35 of the General Court of Justice shall be followed; but, when evidence is not reasonably  
36 available under the rules to show relevant facts, then the most reliable and substantial evidence  
37 available shall be admitted. On the judge's own motion, an administrative law judge may  
38 exclude evidence that is inadmissible under this section. The party with the burden of proof in a  
39 contested case must establish the facts required by G.S. 150B-23(a) by a preponderance of the  
40 evidence. It shall not be necessary for a party or his attorney to object at the hearing to evidence  
41 in order to preserve the right to object to its consideration by the administrative law judge in  
42 making a ~~decision, by the agency in making a final decision,~~decision or by the court on judicial  
43 review."

44 **SECTION 7.2.** G.S. 150B-33(b) reads as rewritten:

45 "(b) An administrative law judge may:

46 ...

47 (11) Order the assessment of reasonable attorneys' fees and witnesses' fees  
48 against the State agency involved in contested cases decided under this  
49 Article where the administrative law judge finds that the State agency named  
50 as respondent has substantially prejudiced the petitioner's rights and has  
51 acted arbitrarily or capriciously or under Chapter 126 where the

1 administrative law judge finds discrimination, harassment, or orders  
2 reinstatement or back pay.

3 ...."

4 **SECTION 7.3.** Section 55.2 of S.L. 2011-398 reads as rewritten:

5 "**SECTION 55.2.** If necessary to effectuate the purposes of this act, the Office of  
6 Administrative Hearings shall seek United States Environmental Protection Agency approval to  
7 become an agency responsible for administering programs under the federal Clean Water Act,  
8 33 U.S.C. §1251 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., and the Resource  
9 Conservation and Recovery Act, 42 U.S.C. §6901 et seq. On or before December 31, 2011, the  
10 Office of Administrative Hearings and the Department of Environment and Natural Resources  
11 shall jointly develop and submit any Memoranda of Agreement, delineations of programmatic  
12 responsibility, procedure for coordination, and other information that United States  
13 Environmental Protection Agency may require in order to effectuate ~~the~~ any necessary approval  
14 process."

15 **SECTION 8.1.** Section 63 of S.L. 2011-398 reads as rewritten:

16 "**SECTION 63.** Sections 2 through 14 of this act become effective October 1, 2011, and  
17 apply to rules adopted on or after that date. Sections 15 through 55 of this act become effective  
18 January 1, 2012, and apply to contested cases commenced on or after that date. With regard to  
19 contested cases affected by Section 55.2 of this act, the provisions of Sections 15 through 27 of  
20 this act become effective when the United States Environmental Protection Agency approvals  
21 referenced in Section 55.2 have been issued or ~~June 15, 2012,~~ October 1, 2012, whichever  
22 occurs first. With regard to contested cases affected by Section 55.1 of this act, the provisions  
23 of Sections 15 through 27 and Sections 32 and 33 of this act become effective when the waiver  
24 referenced in Section 55.1 has been granted or February 1, 2013, whichever occurs first. Unless  
25 otherwise provided elsewhere in this act, the remainder of this act is effective when it becomes  
26 law."

27 **SECTION 8.2.** G.S. 126-34 reads as rewritten:

28 "**§ 126-34. Grievance appeal for career State employees.**

29 Unless otherwise provided in this Chapter, any career State employee having a grievance  
30 arising out of or due to the employee's employment and who does not allege unlawful  
31 harassment or discrimination because of the employee's age, sex, race, color, national origin,  
32 religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall  
33 first discuss the problem or grievance with the employee's supervisor and follow the grievance  
34 procedure established by the employee's department or agency. Any State employee having a  
35 grievance arising out of or due to the employee's employment who alleges unlawful harassment  
36 because of the employee's age, sex, race, color, national origin, religion, creed, or handicapping  
37 condition as defined by G.S. 168A-3 shall submit a written complaint to the employee's  
38 department or agency. The department or agency shall have 60 days within which to take  
39 appropriate remedial action. If the employee is not satisfied with the department or agency's  
40 response to the complaint, the employee shall have the right to appeal directly to the ~~State~~  
41 ~~Personnel Commission~~ Office of Administrative Hearings."

42 **SECTION 8.3.** G.S. 126-34.1(e) reads as rewritten:

43 "(e) Any issue for which appeal to the ~~State Personnel Commission~~ Office of  
44 Administrative Hearings through the filing of a contested case under Article 3 of Chapter 150B  
45 of the General Statutes has not been specifically authorized by this section shall not be grounds  
46 for a contested case under Chapter 126."

47 **SECTION 8.4.** G.S. 126-35(a) reads as rewritten:

48 "(a) No career State employee subject to the State Personnel Act shall be discharged,  
49 suspended, or demoted for disciplinary reasons, except for just cause. In cases of such  
50 disciplinary action, the employee shall, before the action is taken, be furnished with a statement  
51 in writing setting forth in numerical order the specific acts or omissions that are the reasons for

1 the disciplinary action and the employee's appeal rights. The employee shall be permitted 15  
2 days from the date the statement is delivered to appeal to the head of the department. However,  
3 an employee may be suspended without warning for causes relating to personal conduct  
4 detrimental to State service, pending the giving of written reasons, in order to avoid undue  
5 disruption of work or to protect the safety of persons or property or for other serious reasons.  
6 The employee, if he is not satisfied with the final decision of the head of the department, or if  
7 he is unable, within a reasonable period of time, to obtain a final decision by the head of the  
8 department, may appeal to the ~~State Personnel Commission~~Office of Administrative Hearings.  
9 Such appeal shall be filed not later than 30 days after receipt of notice of the department head's  
10 decision. The State Personnel Commission may adopt, subject to the approval of the Governor,  
11 rules that define just cause."

12 **SECTION 8.5.** G.S. 126-36 reads as rewritten:

13 "**§ 126-36. Appeal of unlawful State employment practice.**

14 (a) Any State employee or former State employee who has reason to believe that  
15 employment, promotion, training, or transfer was denied the employee or that demotion, layoff,  
16 transfer, or termination of employment was forced upon the employee in retaliation for  
17 opposition to alleged discrimination or because of the employee's age, sex, race, color, national  
18 origin, religion, creed, political affiliation, or handicapping condition as defined by  
19 G.S. 168A-3 except where specific age, sex or physical requirements constitute a bona fide  
20 occupational qualification necessary to proper and efficient administration, shall have the right  
21 to appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings.

22 (b) Subject to the requirements of G.S. 126-34, any State employee or former State  
23 employee who has reason to believe that the employee has been subjected to any of the  
24 following shall have the right to appeal directly to the ~~State Personnel Commission~~Office of  
25 Administrative Hearings:

26 (1) Harassment in the workplace based upon age, sex, race, color, national  
27 origin, religion, creed, or handicapping condition, whether the harassment is  
28 based upon the creation of a hostile work environment or upon a quid pro  
29 quo.

30 (2) Retaliation for opposition to harassment in the workplace based upon age,  
31 sex, race, color, national origin, religion, creed, or handicapping condition,  
32 whether the harassment is based upon the creation of a hostile work  
33 environment or upon a quid pro quo."

34 **SECTION 8.6.** G.S. 126-36.1 reads as rewritten:

35 "**§ 126-36.1. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by**  
36 **applicant for employment.**

37 Any applicant for State employment who has reason to believe that employment was denied  
38 in violation of G.S. 126-16 shall have the right to appeal directly to the ~~State Personnel~~  
39 ~~Commission~~Office of Administrative Hearings."

40 **SECTION 8.7.** G.S. 126-36.2 reads as rewritten:

41 "**§ 126-36.2. Appeal to ~~Personnel Commission~~Office of Administrative Hearings by**  
42 **career State employee denied notice of vacancy or priority consideration.**

43 Any career State employee who has reason to believe that he was denied promotion due to  
44 the failure of the agency, department, or institution that had a job vacancy to:

45 (1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;

46 (2) Give him priority consideration pursuant to G.S. 126-7.1(c)

47 may appeal directly to the ~~State Personnel Commission~~Office of Administrative Hearings."

48 **SECTION 9.** G.S. 116B-73(a) reads as rewritten:

49 "(a) Except as otherwise provided in subsection (b) of this section, a holder required to  
50 file a report under G.S. 116B-60 shall maintain the records containing the information required

1 to be included in the report for ~~10 years~~ five years after the holder files the report, unless a  
2 shorter period is provided by rule of the Treasurer."

3 **SECTION 10.1.(a)** Each State agency, as defined in G.S. 150B-2(1a), shall submit  
4 a report of the audit, examination, and inspection functions performed by the agency and the  
5 amount of notice, if any, that the agency is required, by law or rule, to provide to a business,  
6 nonprofit, or individual prior to conducting the audit, examination, or inspection. The agency  
7 shall submit the report to the Joint Legislative Administrative Procedure Oversight Committee,  
8 as reestablished by Section 1 of this act, no later than October 31, 2012.

9 **SECTION 10.1.(b)** Article 1 of Chapter 95 of the General Statutes is amended by  
10 adding a new section to read:

11 **"§ 95-9.1. Notice of employer's rights during farm inspections.**

12 The Department of Labor shall, in consultation with farm organizations and the Department  
13 of Agriculture and Consumer Services, prepare a notice to be delivered to the employer, at the  
14 beginning of an inspection of any premises engaged in agricultural employment in this State.  
15 The notice shall advise the employer of any rights or recourse to which the employer and  
16 employees are entitled under State or federal law in connection with any inspection of the  
17 employer's premises or operation conducted by the Department of Labor. The Department shall  
18 deliver the notice to the employer at the beginning of an inspection of premises used for  
19 agricultural employment. For purposes of this section, the term "agricultural employment" shall  
20 have the same meaning as defined in G.S. 95-223(1)."

21 **SECTION 10.1.(c)** Section 10.1(b) of this act becomes effective August 1, 2012,  
22 and applies to all inspections of premises engaged in agricultural employment conducted by the  
23 Department of Labor on or after that date.

24 **SECTION 10.2** G.S. 120-270 reads as rewritten:

25 **"§ 120-270. Report by State agencies to the General Assembly on ways to reduce**  
26 **incidence of identity theft.**

27 Agencies of the State shall evaluate ~~and report annually by January 1 to the General~~  
28 ~~Assembly about~~ the agency's efforts to reduce the dissemination of personal identifying  
29 information, as defined in G.S. 14-113.20(b). The evaluation shall include the review of public  
30 forms, the use of random personal identification numbers, restriction of access to personal  
31 identifying information, and reduction of use of personal identifying information when it is not  
32 necessary. Special attention shall be given to the use, collection, and dissemination of social  
33 security numbers. If the collection of a social security number is found to be unwarranted, the  
34 State agency shall immediately discontinue the collection of social security numbers for that  
35 purpose. Any agency that determines that an act of the General Assembly or other provision of  
36 law impedes the agency's ability to reduce the incidence of identity theft shall report such  
37 findings to the General Assembly by January 1 of the year following such a determination."

38 **SECTION 10.3.** G.S. 143B-431(e) reads as rewritten:

39 "(e) The Department of Commerce may establish a clearinghouse for State business  
40 license information and shall perform the following duties:

41 ...

42 (5) Collaborate with the business license coordinator designated in State  
43 agencies in providing information on the licenses and regulatory  
44 requirements of the agency, and in coordinating conferences with applicants  
45 to clarify license and regulatory requirements.

46 ...

47 f. Report, on a ~~quarterly~~ an annual basis, to the Department on the  
48 number of licenses issued during the previous ~~quarter~~ fiscal year on a  
49 form prescribed by the Department."

50 **SECTION 11.** G.S. 143-213 reads as rewritten:

51 **"§ 143-213. Definitions.**

1 Unless the context otherwise requires, the following terms as used in this Article and  
2 Articles 21A and 21B of this Chapter are defined as follows:

3 ...  
4 (9) Whenever reference is made in this Article to "discharge" or the "discharge  
5 of waste," it shall be interpreted to include discharge, spillage, leakage,  
6 pumping, placement, emptying, or dumping into waters of the State, or into  
7 any unified sewer system or arrangement for sewage disposal, which system  
8 or arrangement in turn discharges the waste into the waters of the State. A  
9 reference to "discharge" or the "discharge of waste" shall not be interpreted  
10 to include "emission" as defined in subdivision (12) of this section.

11 ...  
12 (12) The term "emission" means a release into the outdoor atmosphere of air  
13 contaminants.

14 ...."

15 **SECTION 12.(a)** Section 1 of S.L. 2008-198, S.L. 2009-124, and Section 10.10A  
16 of S.L. 2010-31 are repealed.

17 **SECTION 12.(b)** G.S. 87-97 reads as rewritten:

18 "**§ 87-97. Permitting, inspection, and testing of private drinking water wells.**

19 ...  
20 (h) Drinking Water Testing. – Within 30 days after it issues a certificate of completion  
21 for a newly constructed private drinking water well, the local health department shall test the  
22 water obtained from the well or ensure that the water obtained from the well has been sampled  
23 and tested by a certified laboratory in accordance with rules adopted by the Commission for  
24 Public Health. The water shall be tested for the following parameters: arsenic, barium,  
25 cadmium, chromium, copper, fluoride, lead, iron, magnesium, manganese, mercury, nitrates,  
26 nitrites, selenium, silver, sodium, zinc, pH, and bacterial indicators.

27 (i) Commission for Public Health to Adopt Drinking Water Testing Rules. – The  
28 Commission for Public Health shall adopt rules governing the sampling and testing of well  
29 water and the reporting of test results. The rules shall allow local health departments to  
30 designate third parties to collect and test samples and report test results. The rules shall also  
31 provide for corrective action and retesting where appropriate. The Commission for Public  
32 Health may by rule require testing for additional ~~parameters~~ parameters, including volatile  
33 organic compounds, if the Commission makes a specific finding that testing for the additional  
34 parameters is necessary to protect public health. If the Commission finds that testing for certain  
35 volatile organic compounds is necessary to protect public health and initiates rule making to  
36 require testing for certain volatile organic compounds, the Commission shall consider all of the  
37 following factors in the development of the rule: (i) known current and historic land uses  
38 around well sites and associated contaminants; (ii) known contaminated sites within a given  
39 radius of a well and any known data regarding dates of contamination, geology, and other  
40 relevant factors; (iii) any GIS-based information on known contamination sources from  
41 databases available to the Department of Environment and Natural Resources; and (iv) visual  
42 on-site inspections of well sites.

43 ...."

44 **SECTION 12.1.** Rules adopted by the Environmental Management Commission  
45 pursuant to S.L. 2009-216 and S.L. 2009-486 to implement nutrient management strategies for  
46 the B. Everett Jordan Reservoir and the Falls of the Neuse Reservoir watersheds shall not be  
47 interpreted to apply surface water quality standards set out in 15A NCAC 2B .0218(3)(e)  
48 through (3)(h) to waters designated in the nutrient management rules as WS-V except where:  
49 (i) the designation of WS-V is associated with a water supply intake used by an industry to  
50 supply drinking water for their employees; or (ii) standards set out in 15A NCAC 02B  
51 .0218(3)(e) through (3)(h) are violated at the upstream boundary of waters within those

1 watersheds that are classified as WS-II, WS-III, or WS-IV. This section shall not be construed  
2 to alter the nutrient reduction requirements set out in 15A NCAC 2B .0262(5) or 15A NCAC  
3 2B .0275(3).

4 **SECTION 13.(a)** Part 1 of Article 7 of Chapter 143B of the General Statutes is  
5 amended by adding a new section to read:

6 "**§ 143B-279.17. Tracking and report on permit processing times.**

7 The Department of Environment and Natural Resources shall track the time required to  
8 process all permit applications in the One-Stop for Certain Environmental Permits Programs  
9 established by G.S. 143B-279.12 and the Express Permit and Certification Reviews established  
10 by G.S. 143B-279.13 that are received by the Department. The processing time tracked shall  
11 include (i) the total processing time from when an initial permit application is received to  
12 issuance or denial of the permit and (ii) the processing time from when a complete permit  
13 application is received to issuance or denial of the permit. No later than March 1 of each year,  
14 the Department shall report to the Fiscal Research Division of the General Assembly and the  
15 Environmental Review Commission on the permit processing times required to be tracked  
16 pursuant to this section."

17 **SECTION 13.(b)** The Department of Environment and Natural Resources shall  
18 inventory all permits, licenses, and approvals issued by the Department. The Department shall  
19 provide a list of all permits, licenses, and approvals to the Environmental Review Commission  
20 no later than January 15, 2013, and shall recommend which of the permits, licenses, and  
21 approvals that are not subject to a reporting requirement on permit processing times should be  
22 subject to that requirement.

23 **SECTION 14.(a)** Section 3(b) of S.L. 2011-39 reads as rewritten:

24 "**SECTION 3.(b)** Wading Pool Fence Compliance. – From the effective date of this act  
25 through ~~July 1, 2012,~~ January 1, 2013, the Department of Environment and Natural Resources  
26 shall not require owners and operators of public swimming pools to comply with 15A NCAC  
27 18A .2531(a)(7)."

28 **SECTION 14.(b)** This section becomes effective July 1, 2012.

29 **SECTION 15.1.** No later than July 1, 2013, the Commission for Public Health  
30 shall adopt rules to allow applicants for sanitary landfills the option to (i) apply for a permit to  
31 construct a five-year phase of landfill development and apply to amend the permit to construct  
32 subsequent five-year phases of landfill development; or (ii) apply for a permit to construct a  
33 10-year phase of landfill development and apply to amend the permit to construct subsequent  
34 10-year phases of landfill development, with a limited review of the permit five years after  
35 issuance of the initial permit and five years after issuance of each amendment for subsequent  
36 phases of development. No later than July 1, 2013, the Commission shall also adopt rules to  
37 allow applicants for permits for transfer stations the option to (i) apply for a permit with a  
38 five-year duration to construct and operate a transfer station; or (ii) apply for a permit with a  
39 10-year duration to construct and operate a transfer station, with a limited review of the permit  
40 five years after issuance of the initial permit and five years after issuance of any amendment to  
41 the permit. In developing these rules, the Department of Environment and Natural Resources  
42 shall examine the current fee schedule for permits for sanitary landfills and transfer stations as  
43 set forth under G.S. 130A-295.8 and formulate recommendations for adjustments to the current  
44 fee schedule sufficient to address any additional demands associated with review of permits  
45 issued for 10-year phases of landfill development and the issuance permits with a duration of  
46 up to 10 years for transfer stations. The Department shall report its findings and  
47 recommendations, including any legislative proposals, to the Environmental Review  
48 Commission on or before December 1, 2012. The rules required by this section shall not  
49 become effective until the fee schedule set forth under G.S. 130A-295.8 is amended as  
50 necessary to address any additional demands associated with review of permits issued for

1 10-year phases of landfill development and the issuance of permits with a duration of up to 10  
2 years to construct and operate transfer stations.

3 **SECTION 15.2.(a)** G.S. 143B-437.013(a) reads as rewritten:

4 "(a) Port Enhancement Zone Defined. – A port enhancement zone is an area that meets  
5 all of the following conditions:

6 (1) It is comprised of part or all of one or more contiguous census tracts, census  
7 block groups, or both, in the most recent federal decennial census.

8 (2) All of the area is located within 25 miles of a State port and is capable of  
9 being used to enhance port operations.

10 (3) Every census tract and census block group that comprises the area has at  
11 least eleven percent (11%) of households with incomes of fifteen thousand  
12 dollars (\$15,000) or less."

13 **SECTION 15.2.(b)** This section is effective for taxable years beginning on or after  
14 January 1, 2013.

15 **SECTION 16.1.** G.S. 143-138(b4) reads as rewritten:

16 "(b4) Building rules do not apply to (i) farm buildings that are located outside the  
17 building-rules jurisdiction of any municipality, or (ii) farm buildings that are located inside the  
18 building-rules jurisdiction of any municipality if the farm buildings are greenhouses. For the  
19 purposes of this subsection:

20 ...

21 (3) A "farm building" shall include any structure used for the display and sale of  
22 produce, no more than 1,000 square feet in size, open to the public for no  
23 more than 180 days per year, and certified by the Department of Agriculture  
24 and Consumer Services as a Certified Roadside Farm Market."

25 **SECTION 16.2.** G.S. 130A-248(c1) reads as rewritten:

26 "(c1) The Commission shall adopt rules governing the sanitation of pushcarts and mobile  
27 food units. A permitted restaurant or commissary shall serve as a base of operations for a  
28 pusheart or mobile food unit-pushcart. A mobile food unit shall meet all of the sanitation  
29 requirements of a permitted commissary or shall have a permitted restaurant or commissary  
30 that serves as its base of operation."

31 **SECTION 17.** Except as otherwise provided, this act is effective when it becomes  
32 law.